IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 27860 of 2007(N)

PETITIONER:

1. T.SASIDHARAN, HEAD MASTER,
   GLPS PANAYI, BALUSSERY,
   KOZHIKODE DISTRICT.

2. A.ABDULSHUKOOR, HEAD MASTER,
   GLPS KINALUR EAST, KOZHIKODE.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY
   SECRETARY TO GOVERNMENT, FINANCE DEPARTMENT,
   TRIVANDRUM.

2. THE ASSISTANT EDUCATIONAL OFFICER,
   BALUSSERY, KOZHIKODE DISTRICT.

BY G.P. SRI.MANOJ KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.27860 of 2007

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Dated this the 27th day of September, 2007

J U D G M E N T

I have heard the learned counsel for the petitioners as also the learned Government Pleader who argued on the basis of the instructions received by him pursuant to the order dated 19.9.2007.

2. The petitioners entered Government service after a stint of aided school service. Pursuant to 1997 pay revision which came into effect from 1.3.1997, the petitioners exercised option to switch over to the new scale of pay taking into account their aided school service also. The options exercised by the petitioners as per Exts.P1 and P2 were accepted and the pay was revised accordingly. Now after 8 years, Ext.P3 audit report has been issued stating that the petitioners are not entitled to tag on their aided school service for the purpose of weightage in the matter of pay fixation pursuant to the revision of pay. Of course,

petitioners got a contention that after 8 years their options cannot be held to be invalid. However, for the present, the petitioners would be satisfied with a permission to make an option without taking into account the aided school service afresh in view of the audit objection.

3. The learned Government Pleader would submit that such an option would amount to re-option which is not permissible under law. I am of the opinion that this cannot be regarded as a re-option at all since the petitioners' options have already been accepted which was sought to be annulled now on the basis of an audit objection. When an option accepted is sought to be cancelled, certainly the petitioners are entitled to be given a chance to make the correct options, which cannot be termed as re-option at all. Therefore, I direct that the petitioners shall be given a chance to make the correct options without taking into account their aided school service. Accordingly, this writ petition is disposed of with the following directions:

The petitioners shall forward their correct options without taking into account the aided school service, to the 2nd respondent. On receipt of the above, the AEO shall refix the pay

in the revised scale of pay in accordance with their options and pass appropriate orders thereon with consequential benefits. The petitioners shall forward options within two weeks from today and the AEO shall pass orders on the same within a period of one month thereafter. The other question as to whether the petitioners are entitled to tag on their aided school service for the purpose of service benefits is left open to be agitated appropriately. However, I note the contention of the learned Government Pleader that that question is covered by the Division Bench decision in W.A.No.288/2005 which contention would be available to the respondents, if and when the petitioners raise that issue.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

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P.A. to Judge.